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Missing persons**

Report of the Secretary-General

Summary

In its resolution 61/155, on missing persons, the General Assembly requested the Secretary-General to bring the resolution to the attention of all Governments, the competent United Nations bodies, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to submit a comprehensive report on the implementation of the resolution, including relevant recommendations, to the Human Rights Council at its relevant session and to the General Assembly at its sixty-third session. The present report has been prepared in accordance with resolution 61/155.

* A/63/150 and Corr.1.
** The present report was submitted after the deadline in order to reflect the most up-to-date information.

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I. Introduction

1. The General Assembly, in its resolution 61/155, noted that the issue of persons reported missing in connection with international armed conflict, in particular those who are victims of serious violations of international humanitarian law and human rights law, continues to have a negative impact on efforts to put an end to those conflicts and causes suffering to the families of missing persons, and stressed in that regard the need to address the issue from a humanitarian perspective, among others. The General Assembly urged States strictly to observe, respect and ensure respect for the rules of international humanitarian law, as set out in the Geneva Conventions of 12 August 1949 and in the Protocols Additional thereto of 1977.

2. The Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict, to account for persons reported missing as a result of such a situation and to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with armed conflict. It also reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts and the duty of each party to an armed conflict, as soon as circumstances permit it and, at the latest, from the end of active hostilities, to search for the persons who have been reported missing by an adverse party.

3. The Assembly also requested States to pay the utmost attention to cases of children reported missing in connection with armed conflict and to take appropriate measures to search for and identify those children. It also invited States which are parties to an armed conflict to cooperate fully with the International Committee of the Red Cross (ICRC) in establishing the fate of missing persons and to adopt a comprehensive approach to that issue, including all practical and coordination mechanisms as may be necessary, based on humanitarian considerations only.

4. The Secretary-General was requested to submit a report on the implementation of resolution 61/155 to the Assembly at its sixty-third session.

5. In response to a note verbale dated 10 June 2008, information was received from Azerbaijan, Bahrain, Costa Rica, El Salvador, Guatemala, the Islamic Republic of Iran, Japan, Monaco, Morocco and Ukraine. Information was also received from the International Committee of the Red Cross, the International Commission on Missing Persons and the Argentine Forensic Anthropology Team. The responses can be grouped under four general themes: measures to prevent persons from going missing; the right to know; developments in forensic sciences; and the question of impunity. Each theme will be addressed in sections II to V below.

II. Measures to prevent persons from going missing

6. In its resolution 61/155, the General Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflicts and account for persons reported missing as a result of such a situation.

7. The issue of prevention was stressed by several organizations and countries. The General Assembly adopted, on 20 December 2006, the International Convention

for the Protection of All Persons from Enforced Disappearance, which sets out special measures that States must take to prevent disappearance and address related issues (see resolution 61/177).

8. The Inter-Parliamentary Union, at its 115th Assembly, adopted a resolution on missing persons, in which it set out measures to address and resolve the issue and called upon national parliaments to take action, notably by requesting them to bring the problem of missing persons to the attention of their respective Governments using all the means at their disposal, so that comprehensive national policies are adopted to resolve the problem of missing persons, enhance assistance to families of victims and forestall further disappearances. In the resolution, the Union indicated that the national policies should entail the passage and enactment of a national law on missing persons, accompanied by the necessary regulatory and administrative measures; the establishment of national implementation and coordination mechanisms, notably through national commissions entrusted with implementing international humanitarian law; the examination and systematic resolution of the question of missing persons at the end of a conflict in the framework of a process aimed at establishing and maintaining lasting peace and at implementing, where necessary, appropriate independent and impartial national mechanisms of a judicial and non-judicial nature, designed to shed light on the fate of missing persons and meet the needs of families and communities; and appropriate training of State agents in international humanitarian law, as well as in national legislation on missing persons and its implementation.

9. At the regional level, the General Assembly of the Organization of the American States (OAS) adopted, on 3 June 2008, resolution AG/RES.2416 (XXXVIII-O/08), on persons who have disappeared and assistance to members of their families, in which it urged all parties involved in armed conflict and actors in other situations of armed violence to prevent the disappearance of persons, in accordance with applicable international law, and encouraged member States to continue moving forward in preventing the forced disappearance of persons by considering, where appropriate, the adoption of laws, regulations and/or instructions requiring the establishment of official registries in which records will be kept of all detained persons, among other reasons to allow, as appropriate, family members, other interested persons, judicial authorities and/or bodies that have a recognized mandate to protect detainees to learn, within a short period of time, of any detention that has taken place, all of the foregoing without interfering with appropriate communications between detainees and their families.

10. In the resolution, the General Assembly of the OAS also urged member States to step up their efforts to shed light on the fate of persons who have disappeared and, to that end, to ensure that authorities and all mechanisms involved coordinate their work, cooperate among themselves and complement one another's efforts. It encouraged member States to consider enacting, as applicable, domestic laws that recognize the situation of the families of disappearance victims, taking into account the specific needs and particular interests of women heads of household and children, including the consequences of disappearances on property management, child custody, parental rights and marital status, as well as devising adequate compensations programmes.

The adoption of laws and regulations

11. The development and promotion of national legislation, as outlined in resolutions adopted by international and intergovernmental organizations, remain essential in dealing with the issue of missing persons, preventing disappearances, ascertaining the fate of missing persons, ensuring the proper management of information and supporting the families of missing persons. In that regard, ICRC has prepared a model law, with an article-by-article commentary, to help States develop and adopt domestic legislation in that regard. The model law constitutes framework legislation, or a proposal for action, which can be adjusted for national needs; it can be used in whole or in part to develop or supplement existing internal legislation on various topics.

12. The ICRC model law contains eight chapters, covering a number of issues: definitions of terms such as "missing persons" and "relative of the missing" (under "general provisions"); basic rights and measures relating to persons deprived of their freedom and the right of their relatives to know; the legal status of missing persons and related rights; the tracing of missing persons; respect for the deceased; and criminal liability. ICRC is also conducting and supporting studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. Such studies have already been carried out in Armenia, Azerbaijan, Georgia, Guatemala, Indonesia and Sri Lanka.

13. At the national level, concrete actions are being taken with a view to preventing persons from going missing. For example, in 2004 Japan enacted laws concerning the punishment of grave breaches of international humanitarian law, the treatment of prisoners of war and the protection of civilians. Under the civilian protection law, local governments are obliged to send information concerning the safety and security of residents to the central Government. A computerized information system designed for use in an armed-attack situation was also put into operation, allowing the gathering of information about the safety of those affected and making the information available to the Japanese Red Cross Society. Japan co-organized, with ICRC, a seminar on tracing missing persons for the staff of the Japanese Red Cross Society and the ICRC regional delegation in Kuala Lumpur. The seminar helped the relevant domestic organizations, including local public institutions, to promote efforts to ensure the sharing of information on the safety and security of civilians during armed conflicts.

14. The Government of Iraq has taken steps to address the issue of missing persons. These include the issuance of a decree in 2005 to create a national centre for missing and disappeared persons and the drafting of laws on missing persons and on the protection of mass graves.

The use of means of identification by armed and security forces

15. In time of conflict, the production and proper use of means of identification by armed and security forces play an important role in terms of preventing persons from going missing. In that regard, Governments have the main responsibility for the production and compulsory use by their armed forces of such items as identification tags.

16. In its resolution 61/155, the Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts

and to take appropriate measures to search for and identify those children. Means of personal identification for minors is of importance in terms of prevention, as they are particularly vulnerable in time of conflict, notably to forced recruitment. States authorities must, in that regard, take effective measures to provide means of personal identification to minors with a view to preventing their disappearance.

III. The right of families to know

17. In its resolution 61/155, the Assembly reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts and the need for the parties to an armed conflict to search for persons reported missing by an adverse party. It also called upon States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict and to provide family members with all relevant information they have on their fate.

Tracing

18. As underlined in resolution 61/155, effective measures must be taken to determine the identity and fate of persons reported missing. This responsibility bears on States authorities and armed groups and entails, first, a commitment to implementing international legal instruments, including the four Geneva Conventions and the Protocols Additional thereto, the International Covenant on Civil and Political Rights and the Convention against Torture. Commitment can also be demonstrated through the signing and ratifying of the International Convention for the Protection of All Persons from Enforced Disappearance.

19. Concrete efforts in this regard include the tracing activities carried out by ICRC during armed conflicts and other situations of violence. Those activities include collecting information about people unaccounted for and the circumstances under which they disappeared from their families, direct witnesses, the authorities and any other reliable sources. The information is stored centrally and managed in accordance with laws on the protection of personal data. This information is fundamental when tracing a person and establishing what has happened to him or her. Such searches are undertaken in places of detention, camps for internally displaced persons and refugees, morgues and remote areas. Tracing activities also include supplying the authorities with lists of people unaccounted for, together with information on the circumstances under which they disappeared, requesting information on the location of graves and asking the authorities to allow for the recovery and identification of bodies. The tracing process also involves maintaining a constant dialogue with the authorities or armed groups with the aim of clarifying the fate of missing persons.

20. Tracing activities are also undertaken by the International Commission on Missing Persons in Bosnia and Herzegovina, Croatia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, notably through assisting the authorities in recovering and identifying persons missing since November 2001.

Mechanisms for clarifying the fate of missing persons

21. In order to be effective, tracing activities, the investigation of cases and the management of information require the establishment of mechanisms aimed at

ensuring that parties face up to their obligations and provide the information needed to resolve missing persons cases. In that regard, the Assembly, in its resolution 61/155, recognized the need for the collection, protection and management of data on missing persons according to international and national legal norms and standards, and urged States to cooperate with each other and with other concerned actors working in that area, inter alia, by providing all relevant and appropriate information related to missing persons.

22. Such mechanisms, whose objectives include clarifying the fate of missing persons and supporting their families, already exist in some countries, including Azerbaijan, Chile, Guatemala, Iraq and Japan. However, the establishment of national information bureaux and grave registration services, as provided for in international humanitarian law, is recommended.

23. In Guatemala, a draft law has been submitted to the Congress with a view to creating a commission responsible for the search for persons who are victims of enforced disappearance and other forms of disappearance. Such a commission would design, evaluate and implement plans to search for missing persons, as well as promote measures to deal with victims and their families. The guiding principles of the commission would be the pursuit of, inter alia, the right to the truth, respect for the dignity of the victims and their families and respect for cultural diversity.

24. In 2004, Costa Rica created the Commission on International Humanitarian Law, with the objective of promoting peace and preventing conflict. Since March 2007, the issue of missing persons has been incorporated into the Commission's plan of action. The Commission plans to carry out an analysis of the existing legal framework with a view to proposing, in the medium term, improved mechanisms to prevent persons from going missing, as well as to respond to potential cases of missing persons in Costa Rica.

25. In Bosnia and Herzegovina, a Missing Persons Institute was created, with the assistance of the International Commission on Missing Persons. One of the major tasks of the Institute is to establish a unified central record of those who went missing during the conflict. A central record office will include all records kept by entity agencies and institutions, by associations of families of the missing and by the International Commission on Missing Persons, ICRC and other organizations. The central list will be subject to a rigorous verification process that will ensure its accuracy and prevent the manipulation for political purposes of the numbers of missing persons. The Kosovo Commission on Missing Persons has a mandate to search for persons missing as a result of the conflict, regardless of national, ethnic or religious origin.

Missing persons and archives

26. The proper management and processing of information about missing persons also require the establishment and maintenance of a proper filing and archiving system which complies with standards for keeping personal data confidential. In that respect, ICRC is managing information and processing files on missing persons in many of the contexts in which it operates. A standard software application adaptable to all contexts allows ICRC to store, process and consult information on missing persons while ensuring a high level of data security and confidentiality of information.

27. In Guatemala, the Government is currently working on the gathering, safe-keeping and systematization of archives and documents that could contribute to resolving cases of enforced disappearance and other human rights violations.

IV. The use of traditional forensic methods and DNA forensic sciences in searching for and identifying missing persons

28. As the Assembly recognized in its resolution 61/155, the effective search for and identification of missing persons through traditional forensic methods as well as DNA forensic sciences could significantly assist efforts to identify missing persons.

29. In cases where missing persons are believed to be dead, the recovery, identification and dignified management of their bodies or remains are essential. International humanitarian law requires that States and other parties to an armed conflict or other form of armed violence ensure the proper and dignified management of the dead, to help clarify the fate of missing persons. The 2003 International Conference of Governmental and Non-Governmental Experts on missing persons, which was organized by ICRC, adopted observations and recommendations in that regard. With respect to the management of human remains and information relating to the dead, measures proposed include ensuring that all feasible measures are taken to identify the human remains of those who died and to record their identity; avoiding obstruction of, interference with or impediments to the identification of human remains; issuing death certificates; ensuring that all those involved respect the legal rules and professional ethics applicable to the management, exhumation and identification of human remains; ensuring that forensic specialists, whenever possible, carry out the procedures to exhume and identify human remains; respecting and developing professional ethics and standards of practice for forensic specialists working in international contexts; and ensuring adequate training for all persons collecting information on the dead and handling human remains.

30. With regard to beginning a process of exhumation and identification, the experts agreed that such a process can begin only once a framework has been agreed upon by all those concerned and that the framework should include

(a) The establishment of protocols for exhumation, ante-mortem data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and which have been previously adopted by the scientific community;

(b) Appropriate means of associating the communities and the families in the exhumation, autopsy and identification procedures;

(c) Procedures for handing over the human remains to the family.

31. Guatemala provided information about the functioning of the National Institute of Forensic Sciences, which is responsible for carrying out technical investigations.

32. Some organizations stated that in many parts of the world, forensic aspects of investigating human rights violations were still not included in the process. Although the technological gap in the area of forensics has narrowed over the past two decades in some regions of the South, the credibility of official forensic

institutions often continues to be a major issue. Updating equipment and providing training is crucial for improving results and credibility.

33. While there have been some improvements in this area, it remains critically important, albeit extremely difficult, to ensure that independent forensic investigations are carried out or that independent experts accompanying forensic officials investigating human rights violations. Forensic investigations conducted solely by potentially unreliable experts or institutions that may have a conflict of interest relating to the crime under investigation often do not provide closure to families of victims or society as a whole, resulting in requests for further investigations.

34. With regard to measures aimed at facilitating the right to truth for the families of victims, forensic investigators should assist such families whenever possible by (a) providing basic information before, during and after the forensic work is conducted, informing them of the many possible outcomes of any given forensic investigation (such as the likelihood of locating or identifying remains) and the final results; (b) facilitating access to sites where investigations are being carried out; and (c) considering and addressing their concerns, doubts, questions and objections, taking into account their cultural, religious and funeral customs. If such issues are not taken into account before a forensic investigation has begun, the work may fail and lead to more suffering.

35. The training and promotion of local forensic experts is also an important issue. While international forensic teams assisting in the search for the missing and the disappeared resulting from wars, internal conflicts and repressive regimes have made a major contribution, it is also important that they not limit their interventions to forensic investigation and analysis, but also emphasize working with, training and promoting local teams and local forensic experts. This is essential for a variety of reasons, including the following:

(a) In most of the countries concerned, the forensic work of identifying victims of violations takes decades. International teams tend to spend only a limited amount of time on each mission, usually for a few years only; a national team can dedicate itself full time to this work;

(b) In many of the countries concerned, forensic science is less developed or almost non-existent and, in most cases, archaeological, anthropological and genetic techniques are uncommon or not used at all. The use of physical evidence in court is, in general, limited, and most testimony is oral. The creation of a national forensic team or the training of forensic professionals who can address the problem usually leads to a general improvement in criminal investigation procedures and, as a result, in the exercise of the rule of law;

(c) National teams may serve the families of the victims and their communities in more effective ways because they speak the language, are from the same or a similar culture, have often lived through comparable experiences and often have a strong commitment to improving the rule of law in their countries.

V. Missing persons and the issue of impunity

36. The issue of impunity is not explicitly addressed in resolution 61/155. Reference is made to the principles and norms of international humanitarian law, as

well as international standards of human rights in the resolution. The Assembly noted in that regard that armed conflicts are continuing in various parts of the world, often resulting in serious violations of international humanitarian law and human rights law. It further noted that the issue of persons reported missing in connection with international armed conflicts, in particular those who are victims of serious violations of international humanitarian law and human rights law, continues to have a negative impact on efforts to put an end to those conflicts and causes suffering to the families of victims of missing persons, and stressed in that regard the need to address the issue from a humanitarian perspective, among others.

37. The General Assembly of OAS, in its resolution AG/RES. 2416 (XXXVIII-O/08), urged member States to punish those found guilty of violating, in armed conflict and other situations of armed violence, provisions of international human rights law and/or international humanitarian law, within their respective spheres of application, which protect persons from disappearances, in particular, forced disappearances. The resolution also urged member States to cooperate among themselves in addressing the various aspects of the problem of the disappearance of persons, including in the area of support for families, the search for missing persons, collection, exhumation and identification of human remains, and mutual assistance in criminal proceedings.

38. The Inter-Parliamentary Union, in its resolution on missing persons, requested parliaments to bring the problem of missing persons to the attention of their respective Governments using all the means at their disposal, so that comprehensive national policies are adopted to resolve the problem of missing persons, enhance assistance to families of victims and forestall further disappearances. The Union called for such national policies to entail, inter alia, the passage and enactment of a national law on missing persons, accompanied by the necessary regulatory and administrative measures, covering notably the aspects of the criminalization under national criminal legislation of violations of international humanitarian norms and international human rights standards applicable to disappearances, and in particular criminalization of enforced disappearances; the establishment of a mechanism for investigation and prosecution to guarantee the enforcement of such national criminal legislation; no recourse to pardon, amnesty or similar political measures to terminate the criminal prosecution or punishment of such crimes; and ineligibility to hold public office when, in the view of the constitutional or competent legal authority, the accused is considered to have perpetrated such crimes. Such national policies should also entail the examination and systematic resolution of the question of missing persons at the end of a conflict in the framework of a process aimed at establishing and maintaining lasting peace and at implementing, where necessary, appropriate independent and impartial national mechanisms of a judicial and non-judicial nature, designed to shed light on the fate of missing persons and meet the needs of families and communities.

39. In a report prepared by ICRC in connection with the twenty-eighth International Conference of the Red Cross and Red Crescent, held from 2 to 6 December 2003, the Committee reiterated the observations and recommendations of the International Conference of Governmental and Non-Governmental Experts, which, with regard to the issue of the clarification of the fate of persons unaccounted for, noted that families and communities need acknowledgment of the events leading to persons becoming unaccounted for and need perpetrators to be held accountable. Measures suggested by the Conference included setting up,

whenever necessary, complementary judicial or non-judicial mechanisms to respond to families' needs and addressing issues related to reparation.

40. Contributions received indicated that approaches to the issue of missing persons and impunity must be reconciled with the seminal work of the United Nations on transitional justice and the rule of law. From that perspective, the suffering of the families of the missing, to which the Assembly, in its resolution 61/155, accords much attention, cannot be addressed only by instruments and mechanisms focusing on humanitarian considerations. Of key importance with regard to the complex issue of missing persons is the fact that the problem often originates in the context of armed conflict and remains well after such conflicts have ended, both causing continuing anguish to families and posing an obstacle to building sustainable peace. The transition from conflict to a state of stability which includes the full implementation of the rule of law is a lengthy process, and addressing the issue of missing persons is an integral part of that process and cannot be accomplished in the short term. The issue of missing persons has a different quality during or immediately after a conflict than it does years or even decades later, after a society has made progress in rebuilding peacetime institutions and reinstating the accountability of its Government. The issue of missing persons thus becomes part of the process of delivering good governance, including democratic governance, and of implementing the rule of law, including ending impunity. It is important that, as part of the process of ending suffering, the families of the missing receive answers. In the context of rebuilding societies affected by conflict, it is also important for such answers to be provided by the very institutions that will be protecting the rights of citizens in the future. By providing answers, law-based local institutions demonstrate that progress has been made and can contribute to rebuilding trust in public institutions. The missing are often victims of heinous crimes, and the location from which their remains are recovered are often the sites of crimes. Beyond the criminal justice dimension, the families of the missing have entitlements under civil and public law, and society at large has an interest in establishing the truth of what happened and making use of its democratic, administrative and judicial institutions for that purpose. The families of the missing want their pain and anguish to be addressed by their Governments and legal institutions so that, eventually, a sense of justice can be delivered.

41. The Working Group on Enforced or Involuntary Disappearances carried out a mission to Argentina from 21 to 24 July 2008 in order to compile information on the situation with regard to enforced disappearances in the country. The Working Group undertook the fact-finding mission on the basis of the conviction that it should carry out missions not only to countries where there are ongoing conditions of political violence or internal armed conflicts leading to enforced disappearances, but also to those countries which, while they have experienced enforced disappearances in the past and still have a large number of outstanding cases with the Working Group, now have democratic regimes, as is the case with Argentina. The Working Group has the core humanitarian mandate to serve as a channel of communication between the families of disappeared persons and the Governments of the countries where those disappearances occurred. In addition, the Working Group also monitors States compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance.

42. According to forensic sciences organizations, forensic investigations conducted solely by potentially unreliable experts or institutions that may represent

a conflict of interest with the crime under investigation often do not provide closure to families of victims and society as a whole. In that regard, it is essential to promote exchanges, including in the context of presentations and workshops, for local judiciaries and lawyers to provide basic information about how the forensic sciences, mainly forensic anthropology, archaeology and genetics, can contribute to judicial investigations. However, evidence of human rights violations does not necessarily mean that justice can be immediately achieved.

43. Many human rights violations are investigated under a judicial framework but not prosecuted because of amnesty laws that limit the role forensic evidence can play in judicial processes. However, as new mechanisms are developed in the field of international criminal law and old cases are brought back to trial,[1] it is important that vital evidence, documental archives and forensic reports be preserved by courts, non-governmental organizations working the field of human rights, truth commissions and other institutions involved in pre-trial or related investigations, so that they can be used, as needed, in future trials. In the same vein, the incorporation of international forensic protocols and guidelines for human rights investigations into domestic criminal procedures is essential. This will ensure that scientific tools and mechanisms developed for human rights investigations will have a longer-term effect. The documents that the United Nations and ICRC have produced relating to forensic science and human rights should be incorporated into domestic criminal procedures.

VI. Conclusions and recommendations

44. **It is essential that measures be taken to prevent persons from going missing, establish the right to know, develop forensic science capacity and counter impunity.**

45. **The problem of missing persons is particularly severe in the context of armed conflict. Measures should be taken to minimize the phenomenon, such as establishing adequate identification processes. The issue should also be addressed as part of peacebuilding processes, with reference to all justice and rule-of-law mechanisms, including the judiciary, parliamentary commissions and truth-seeking mechanisms, on the basis of transparency, accountability and public involvement and participation.**

46. **The right of families to know the fate of missing persons should be respected at all times.**

47. **With regard to forensic sciences, there should be support for forensic work as a component of the investigation of human rights violations. Access to independent forensic investigations of violations of human rights and humanitarian law should also be improved. Appropriate mechanisms should also be created to continue the recovery and identification process beyond the mandate of judicial and non-judicial mechanisms. Enhanced contacts should be established between independent forensic experts and local judiciaries, prosecutors, judges and lawyers. The need for training and promoting local teams and local forensic experts should also be recognized. In this context,**

[1] Argentina and Chile constitute relevant examples in that regard.

regional initiatives could be helpful to improve independence and efficiency in the application of forensic sciences to the investigation of the missing.

48. **It is essential that there is accountability for violations of human rights, including enforced disappearances. In this context, States are called upon to ratify relevant international treaties, in particular the International Convention for the Protection of All Persons from Enforced Disappearance. States are also called upon to bring their domestic laws and practices into conformity with that Convention.**